

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 846 of 1997

HON'BLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

NARENDRA BHUPATSINH MAKWANA

Versus

STATE OF GUJARAT

Appearance:

MR MC BAROT for Petitioner No. 1,2,3

MR RM CHANUHAN, APP, for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 21/11/2003

ORAL JUDGEMENT

1. Instant appeal filed under section 374(2) of the Code of Criminal Procedure, 1973, is directed against judgement dated August 16, 1997, rendered by the learned Additional Sessions Judge, Kheda at Nadiad, in Sessions Case No.293/95, by which the appellant no.1 is convicted of the offence punishable under section 302 of IPC, and sentenced to suffer RI for life and fine of Rs.20000/-, in default SI for 3 months, whereas the appellant no.2 is convicted of the offence punishable under section 323 of the IPC and sentenced to suffer SI for six months and fine of Rs.2000/-, in default, SI for three months, and the appellant no.3 is convicted of the offence punishable under section 324 of IPC and sentenced to R.I. for one year and fine of Rs.2000/-, in default, SI for three months.

2. Fulabhai Haribhai Makwana was resident of village Paladi, Taluka Khambhat, District Kheda. He had two sons. The name of the eldest son was Ambalal, whereas name of another son was Dineshbhai. Ambalal was staying separate from Fulabhai, whereas Dineshbhai was living with his father i.e. Fulabhai. The name of brother of Fulabhai is Bhupatsinh. Two months prior to the date of the incident, which is June 5, 1995, Fulabhai had some altercation with his brother Bhuptatsinh. On the date of the incident, Bhupatsinh was at his house. At that time the appellant no.1 who is nephew of Fulabhai had come with a dissected tail of a cow in one hand and spear in the other. The case of the prosecution is that the appellant no.1 was uttering abuses, as according to him, Ajay, who is son of Ambalal had dissected the tail of a cow belonging to him. On hearing filthy abuses being hurled by the appellant no.1, Ambalal had come out of the house and asked the appellant no.1 not to utter abuses. What is maintained by the prosecution is that thereupon the appellant no.1 had given a spear blow on chest of Ambalal as a result of which Ambalal had fallen down in a bleeding condition. On hearing commotion, the second son of Fulabhai i.e. Dineshbhai had also come at the place of incident and attempted to rescue Ambalal, but he was injured by the appellant no.2 who was armed with an iron pipe. The blow of iron pipe delivered by the appellant no.2 had landed on the left hand of Dineshbhai as a result of which he had sustained injuries. The case of prosecution is that thereafter the appellant no.3 had also come to the place of incident with a spear and had attempted to deliver a blow to Ambalal, but as Dineshbhai, who is brother of Ambalal, had intervened,

Dineshbhai had received an injury below his left armpit. The case of the prosecution is that Fatesinh Bhupatsinh who was original accused no.4 and who has been acquitted by the learned Sessions Judge had also come at the place of incident and attempted to cause injury to Ambalal by means of a "danti", but the blow had landed on the hand of Dineshbhai. Because of the incident, commotion had taken place, and people had gathered together at the place of incident, as a result of which the appellants and the original accused no.4 Fatehsinh had run away from the place of incident with their respective weapons. Ambalal had sustained serious injuries. Therefore, Fulabhai, who was his father, had removed Ambalal to government dispensary, Khambhat for treatment. The doctor on duty at the dispensary had declared Ambalal dead before arrival. Thereafter Fulabhai Haribhai, in the company of his son Dineshbhai, had gone to lodge the complaint at Khambhat Rural Police Station. The complaint narrated by Fulabhai was recorded by PSI Mr. R.G. Patel. The complaint of Fulabhai was investigated by PSI Mr. Patel, who had recorded statements of witnesses found to be conversant with the facts of the case. He had also recovered weapons used by the appellants during the course of investigation. The incriminating articles recovered were sent to Forensic Science Laboratory for analysis. On completion of investigation the appellants and original accused no.4 i.e. Fatehsinh were chargesheeted of the offences punishable under sections 302 read with section 114, sections 323, 324 read with 114, and section 504 read with 114 of the Indian Penal Code as well as section 135 of the Bombay Police Act, 1951. As the offence punishable under section 302 of the IPC is exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Kheda at Nadiad for trial, where it was numbered as Sessions Case No.293/1995.

3. The learned Judge had framed charge against the appellants and original accused no.4 Fatesinh, for the offences punishable under sections 302 read with 114, sections 323, 324 read with 114, section 504 read with 114 of IPC and section 135 of the Bombay Police Act, 1951. The charge was read over and explained to the appellants and the acquitted accused who had not pleaded guilty to the same and claimed to be tried. Therefore, the prosecution had examined (1) Fulabhai Haribhai (PW1-Exh.18), (2) Dineshbhai Fulabhai (PW2-Exh.19), (3) Bhagwansinh Ramsinh Vaghela (PW3-Exh.20), (4) Dhirubhai Punjabhai (PW4-Exh.24), (5) Ravjibhai Manibhai (PW5-Exh.25), (6) Madhusudan Nanalal Pandya (PW6-Exh.26), (7) Mahesh Amrutlal Patel (PW7-Exh.29), (8) Hassan Ali

Akbarali (PW8-Exh.31), (9) Laxmiben Dineshbhai (PW9-Exh.32), (10) Samantbhai Dhulabhai (PW10-Exh.35), (11) Prafulchandra Dholatram Bhrambhatt (PW11-Exh.36), (12) Dr. Mahendra Gangaram Vaghela (PW12-Exh.42) and (13) Ranchhodbhai Gopalbhai Patel (PW13-Exh.55) to prove the case against the accused. The prosecution had also produced documentary evidence such as map of place of incident, inquest panchnama at Exh.27, panchnama relating to discovery of weapons at Exh.30, panchnama of place of occurrence at Exh.35, complaint of Fulabhai at Exh.56, postmortem notes of the deceased at Exh.37, report of the serologist, etc. in support of its case against the accused.

4. After recording of evidence of prosecution witnesses was over, the learned Judge had explained to the appellants and the acquitted accused the circumstances appearing against them in the evidence of prosecution witnesses, and recorded their further statements as required by section 313 of the Code of Criminal Procedure, 1973. In their further statements, the case of the appellants was that of total denial and the appellants had not led any evidence in support of their defence. However, the appellants had filed written statements for consideration of the Court.

5. After hearing the learned counsel of the parties and considering the evidence on record, the learned Judge held that the deceased Ambalal Fulabhai had died a homicidal death. It was deduced by the learned Judge that the author of injury no.1 sustained by deceased Ambalal was appellant no.1, whereas injury nos.2 and 3 sustained by witness Dinesh Fulabhai had been caused by the appellant no.2 i.e. Rameshbhai and by appellant no.3 i.e. Pratabbhai, by means of iron pipe and spear respectively. On appreciation of medical evidence, the learned Judge held that injury no.1 caused to the deceased was sufficient in the ordinary course of nature to cause his death and therefore the appellant no.1 had committed offence punishable under section 302 of IPC. The learned Judge further held that four accused had not shared common intention and that original accused no.4 i.e. Fatesinh was not involved in the commission of the crime at all. According to the learned Judge, the three appellants were aggressors and had no right of private defence. In view of the above referred to conclusions, the learned Judge convicted the appellant no.1 of the offence punishable under section 302 of IPC and sentenced him to suffer RI for life and a fine of Rs.20000/- in default SI for three months, whereas the appellant no.2 is convicted of the offence punishable under section 323

of IPC and sentenced to undergo SI for six months and fine of Rs.2000/-, in default, SI for three months and the appellant no.3 is convicted of the offence punishable under section 324 of IPC and sentenced to suffer RI for one year and fine of Rs.2000, in default, SI for three months, by the impugned judgement, giving rise to instant appeal.

6. Mr. M.C. Barot, learned counsel of the appellants contended that the appellant nos.1 and 2 had suffered injuries at the hands of (1) Ajaybhai who is son of deceased Ambalal, (2) Dineshbhai Fulabhai, (3) Fulabhai Haribhai and (4) deceased Ambalal which was never explained by the prosecution witnesses and therefore in view of the decision of the Supreme Court in Laxmisingh Vs. State of Bihar (AIR 1976 SC 2263), the prosecution case should be disbelieved and the appellants should be acquitted. According to the learned counsel, the evidence of witness Dienshbhai Fulabhai would indicate that the incident in question was preceded by altercation which had taken place between deceased Ambalal Fulabhai and witness Dinesh Fulabhai on one hand, and the appellant no.1 on the other, which had lasted for about five minutes, after which a spear blow was given by the appellant no.1 to deceased Ambalal without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and as the appellant no.1 had not taken undue advantage or acted in a cruel or unusual manner, the learned trial Judge was not justified in convicting the appellant no.1 of the offence punishable under section 302 of IPC. The learned counsel of the appellants maintained that the appellant no.2 is convicted of the offence punishable under section 323 of IPC for causing injury to witness Dineshbhai, but neither witness Dineshbhai nor any of the prosecution witnesses have offered any explanation worth the name regarding serious injuries sustained by the appellant no.2 and therefore the appeal filed by the appellant no.2 deserves to be accepted. It was argued that the appellant no.3 is convicted of the offence punishable under section 324 of IPC for causing simple injury to Dineshbhai by means of a spear, but the evidence of Laxmiben Dineshbhai (PW9-Exh.32) indicates that the appellant no.3 had come on the scene of offence only after the incident was over which, in turn, would establish that the appellant no.3 had not participated in commission of crime at all and therefore his appeal also should be allowed by the Court. The learned counsel emphasised that the evidence on record is not appreciated in right perspective by the learned judge of the trial court and therefore the impugned judgement should be set aside.

7. Mr. R.M. Chauhan, learned Additional Public Prosecutor contended that the evidence on record and more particularly that of witness Fulabhai, Dineshbhai and Laxmiben establishes that the appellant no.1 had delivered fatal blow with a spear on the chest of deceased which according to the medical evidence was sufficient in the ordinary course of nature to cause his death and therefore well founded conviction of the appellant no.1 of the offence punishable under section 302 of IPC should be maintained by this Court. It was argued for prosecution that the evidence of injured Dineshbhai which is corroborated by evidence of (1) Fulabhai Haribhai (2) Laxmiben Dineshbhai, (3) Dhirubhai Punjabhai as well as Dr. Mahendra Gangaram Vaghela, establishes beyond reasonable doubt that injury nos.2 and 3 sustained by Dineshbhai were caused by appellant nos.2 and 3 with iron pipe and spear respectively and therefore the appeal should be dismissed.

8. This Court has undertaken a complete and comprehensive appreciation of all vital evidence of the case and the entire evidence with reference to broad and reasonable probabilities of the case. The fact that deceased Ambalal had died a homicidal death, is not in dispute. The evidence of witness Fulabhai which is corroborated by evidence of witness Dineshbhai and witness Laxmiben would indicate that he had received a spear blow on his chest. The injuries sustained by the deceased are noted in inquest panchnama which is produced on record of the case at Exh.27. Further, injuries sustained by the deceased were also noted by Dr. Mahendra Gangaram Vaghela who had performed autopsy on the dead body of the deceased. The injuries noted by Dr. Mahendra Vaghela are mentioned in postmortem notes produced at Exh.37. As per the doctor, the cause of the death of the deceased was cardiac respiratory arrest due to hypovolemic shock due to perforated injury over arch of aorta. Thus, this court finds the conclusion recorded by the learned Judge that deceased Ambalal had died a homicidal death is eminently just and the said finding is hereby upheld.

9. It is necessary to note that the appellants and acquitted accused no.4 were charged of the offences punishable under section 302 read with 114, 323 and 324 read with 114, 504 read with 114 and section 135 of the Bombay Police Act, 1951. However, the learned Judge, in the impugned judgement, has recorded a finding of fact that all the four accused had not done any criminal act in furtherance of the common intention of all. This

court finds that no charge under section 34 of IPC was framed against the appellants or the acquitted accused and therefore it is difficult for this court to appreciate the finding recorded by the learned Judge of the trial court that the appellants and the acquitted accused had not committed any criminal act in furtherance of common intention of all. What was required to be considered was whether the appellants and the acquitted accused abetted each other in commission of crime. The appellants and the acquitted accused were charged of the offences punishable under sections 302, 323, 324, 504 read with 114 of IPC. No reliable evidence was led by the prosecution nor any finding is recorded by the learned Judge that the appellant nos.2 and 3 had abetted the appellant no.1 in commission of murder of deceased Ambalal or for that reason the appellants and the acquitted accused had abetted each other in commission of crime. The acquittal of accused no.4 Fatehsinh recorded by the learned Judge is not subject matter of challenge before this court. This court is not called upon to decide the role of the appellant nos.2 and 3 with reference to the provisions of section 34, IPC or 114 IPC and that the Court will have to ascertain whether the prosecution has been able to establish its case against the appellants for individual role/roles attributed to them.

10. Witness Fulabhai Haribhai, in his testimony before the Court, has stated that the incident in question had taken place on June 5, 1995 and that at about 1.30 pm when he was at his house, the appellant no.1, who is his nephew, had come with a dissected tail of a cow in one hand and spear in the other and that he was abusing. The witness has stated that thereupon his son Ambalal had come out of the house and asked the appellant no.1 not to utter abuses whereupon the appellant no.1 had given a blow of spear on chest of Ambalal. According to this witness, Ambalal had fallen down on the ground as soon as he had received the injury and his second son who was staying nearby had come to the place of incident and attempted to rescue the deceased Ambalal. This witness has stated before the Court that thereupon the appellant no.2 had given a blow with iron pipe on left hand wrist of his son Dinesh, after which the appellant no.3 had come to the place of incident with a spear, and as his son Dinesh had tried to save Ambalal, he had received a blow below his left side armpit. The witness has asserted before the Court that thereafter accused no.4 Fatesinh Bhupatsinh had come to the place of incident and tried to injure his son Ambalal by means of a "danti", but his son Dinesh had tried to save Ambalal and

therefore Dinesh had received another injury on his hand. In his cross-examination it was suggested to the witness that deceased Ambalal Fulabhai had given spear blow to the appellant no.1, but the said suggestion was denied by him. The suggestion made to the witness that the blow aimed at the appellant no.1 was warded off by him by holding the spear in his hand as a result of which the appellant no.1 had sustained injuries on fingers, was also denied by him. The suggestion made by the defence to this witness that the appellant no.1 had sustained bleeding injuries and had fallen down on the ground was also denied by him. Witness Dineshbhai in his substantive evidence before the Court has stated that the appellant no.1 had given a spear blow on the chest of the deceased and that he was injured by appellant no.2 with an iron pipe, whereas appellant no.3 had caused injury by means of spear near left side ear. This witness has also not offered any explanation regarding injuries sustained by the appellant nos.1 and 2 as well as acquitted accused Fatehsinh. What is maintained by this witness in cross-examination is that before blow with spear was delivered by the appellant no.1 to the deceased, an altercation had taken place which had lasted for about five minutes. Witness Laxmiben Dineshbhai (PW9-Exh.32), who is wife of witness Dineshbhai, has stated in her evidence that the appellant no.1 had come with a dissected tail of a cow in one hand and spear in the other and on inquiry being made by the deceased with the appellant no.1 as to what had happened, the appellant no.1 had given a spear blow, which had landed on the chest of the deceased. She has maintained before the Court that thereafter the appellant no.2 had caused injury on left hand wrist of her husband by means of an iron pipe, whereas acquitted accused Fatehsinh had made futile attempt to cause injury to her father-in-law Fulabhai by means of "danti" and that the appellant no.3 had given spear blow to her husband. It is relevant to notice that witness Dinesh Fulabhai (PW2-Exh.19) has not received any injury which could have been caused by spear. Witness Laxmiben in her cross-examination has stated that after deceased Ambalal had fallen down on the ground, several persons had collected and the appellant no.3 Pratapbhai had also come along with others who were working in fields. Her evidence would indicate that the appellant no.3 was not present at all when the deceased was fatally injured. Witness Laxmiben had also refused to give any explanation regarding injury sustained by the appellant nos.1 and 2 and acquitted accused Fatesinh. However, the evidence of Dr. Mahendra Gangaram Vaghela (PW2-Exh.42) shows that on June 5, 1995, he had treated the appellant no.1 and found the following injuries:

1. Stab injury to manusterni region - 1/2 cm x 1/2 cm x 1/2 cm approx.
2. Stab injury to right palm transversely 1/2 cm x 1/2 cm x 1/2 cm approx.
3. Incised wound - right middle finger - 2 1/2 cms x 1/2 cm x 1/2 cm approx.

The evidence of Dr. Vaghela further establishes that on June 5, 1995, he had treated the appellant no.2 Ramesh Bhupatsinh Makwana and found following injuries:

1. Stitched CLW 2 in number over left frontal region about 2 cms in size and 1 cm in size respectively.
2. Stitched CLW over left side chest in fifth intercostal space in mid-clavicular line about 2 cms size.
3. Haematoma left hand about 4 cm diameter.
4. Linear contusion about 4 cms x 2 cms on left side of chest.

It is also indicated from his testimony that on June 5, 1995, he had treated acquitted accused Fatehsinh and found following injuries:

1. Incised wound - right ear behind 2 cms x 0.5 cm x 0.5 cm. approx.
2. Abrasion - Left side of nose
 1. 0.5 cm x 0.5 cm - upper part
 2. 0.25 cms x 0.25 cm - lower part.

The cross-examination of the witness shows that after referring to the injury sustained by the appellant nos.1 and 2 and acquitted accused Fatesinh, the defence had sought his explanation as to how the injuries were sustained by them, but the witness had flatly refused to give any explanation regarding injuries sustained by the appellants or by acquitted accused Fatesinh. The record further shows that in cross case i.e. Sessions Case

No.16/96, Ajaybhai Makwana, who is son of deceased Ambalal, was prosecuted of the offence punishable under section 429 of IPC, whereas deceased Ambalal was alleged to have caused injury by a spear to the appellant no.1 and Dineshbhai Fulabhai who is examined as prosecution witness no.2 in this case as well as Fulabhai Haribhai who is examined as prosecution witness no.1 in this case were prosecuted of the offence punishable under section 324 read with 114 of IPC. Further, the above named persons were also charged of having committed offences punishable under sections 323 and 504 read with 114 of IPC and section 135 of the Bombay Police Act. The learned counsel of the appellants has informed this Court that (1) Ajaybhai, (2) Dineshbhai and (3) Fulabhai were tried in Sessions Case No.16/96 by the learned Additional Sessions Judge, Kheda at Nadiad and have been acquitted and this is not controverted by the learned Additional Public Prosecutor. The evidence of Dr. Vaghela establishes that the injuries sustained by the appellant no.2 were serious in nature and he would have lost his life but for timely medical assistance. Under the circumstances this court is of the opinion that the principle laid down by the Supreme Court in Lakshmi Singh Vs. State of Bihar (AIR 1976 SC 2263) would be applicable to the facts of the present case. As per the said decision, non-explanation of the injury sustained by the accused at or about the time of occurrence or in the course of altercation, in a murder case, may indicate that (1) the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version, (2) the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable and (3) that in case there is a defence version which explains the injuries on the person of the accused, it is rendered probable so as to throw doubt on the prosecution case. It is relevant to notice that the prosecution in this case has examined only closely related persons and not tendered evidence of any independent witness. Therefore, the omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance in this case.

11. As observed earlier, the evidence of Dineshbhai Fulabhai (PW2-Exh.19) establishes that before the deceased was fatally wounded, an altercation had taken place between him and witness Dineshbhai on one hand and the appellant no.1 on the other. At the time when the appellant no.1 had inflicted spear blows on chest of the deceased, the other two appellants were not present and

had come at the place of incident one after another. In view of the facts emerging from record, it would be relevant to notice the provisions of Exception 4 to section 300 which deals with culpable homicide not amounting to murder. It reads as under:

"Exception 4: Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner."

The evidence on record does not indicate that the appellant no.1 had caused injury by means of spear on chest of the deceased with premeditation. After altercation which had ensued for about five minutes, a sudden fight had taken place between the appellant no.1 and the deceased and in the heat of passion, the appellant no.1 had delivered one spear blow on the chest of the deceased. The evidence on record does not indicate that the appellant had taken any undue advantage or acted in a cruel or unusual manner. It may be stated that for the purpose of applicability of Exception 4 it is immaterial in such case as to which party had offered the provocation or committed the first assault. On the facts and in the circumstances of the case, this court is of the firm opinion that the act of the appellant, in giving spear blow on chest of the deceased, would amount to culpable homicide not amounting to murder and that the appellant no.1 would be liable to be convicted of offence punishable under section 304 of IPC. If the evidence of witness Fulabhai and witness Dineshbhai is read with the evidence of witness Laxmiben, it becomes at once clear that the appellant had done an act with the knowledge that his act was likely to cause death, but without any intention to cause death and therefore, the appellant no.1 would be liable to be convicted of the offence punishable under section 304 Part II of IPC. The jail remarks sheet of the appellant no.1 produced by the learned Additional Public Prosecutor for perusal of the court indicates that the appellant no.1 has undergone sentence of about 8 years and this Court is of the view that interest of justice would be served if the appellant no.1 is sentenced to imprisonment which he has already undergone and fine of Rs.10000/- (Rupees ten thousand), in default SI for six months for having committed offence punishable under section 304, Part II, IPC.

12. As far as the appellant no.2 is concerned, this court finds that he had received serious injuries in the

incident which have not been explained at all by any of the witnesses. The only role attributed to the appellant no.2 was that he had given blow with an iron pipe on the left hand wrist of witness Dineshbhai. As the witnesses have failed to offer any explanation whatsoever regarding injury sustained by him, the claim of the prosecution witnesses that he had caused simple injury to witness Dineshbhai becomes doubtful and highly unreliable. The defence version that he was assaulted by witness Fulabhai, witness Dineshbhai and deceased Ambalal is rendered probable so as to throw doubt on the prosecution case. Therefore his conviction is liable to be set aside.

13. As far as the case against the appellant no.3 is concerned, his presence at the time of incident stands ruled out by the evidence of prosecution witness Laxmiben Dineshbhai (PW9-Exh.32), who in no uncertain terms has admitted in her cross-examination that the appellant no.3 had come to the place of incident along with others who were working in the field, after the deceased was fatally wounded. If the appellant no.3 had been present at the place of incident, in all probability he would have also received injuries as were received by the appellant nos.1 and 2 and acquitted accused Fatehsinh. However, it is an admitted position that appellant no.3 had not received any injuries. Further the claim of Dineshbhai that the appellant no.3 had caused injury to him near left ear by means of a spear does not get corroboration from medical evidence. Under the circumstances, the defence of the appellant no.3 that he was not present at the time of place of incident and that he was falsely implicated in the case stands probalised. On overall view of the matter, this court is of the opinion that the conviction of the appellant no.3 of the offence punishable under section 324 of IPC cannot be sustained and that he is entitled to be acquitted.

14. For the foregoing reasons, the appeal filed by the appellant no.1 partly succeeds. The conviction of the appellant no.1 of the offence punishable under section 302 of IPC is altered to one under section 304, Part II of IPC. As noticed in the judgement, the appellant no.1 has undergone sentence of R.I. for eight years and therefore, for commission of the offence punishable under section 304, Part II of IPC, the appellant no.1 is sentenced to the imprisonment which he has already undergone. The sentence of fine imposed on the appellant no.1 is reduced from Rs.20000/- (Rupees twenty thousand only) to Rs.10000/(Rupees ten thousand only) and it is directed that the if the appellant no.1

fails to make the payment of fine of Rs.10000/- (Rupees ten thousand only), he shall undergo further simple imprisonment for a period of six months. It is directed that out of the amount of fine which may be paid by the appellant no.1, a sum of Rs.7500/- (Rupees seven thousand five hundred only) shall be paid to the widow of deceased Ambalal after due verification. It is clarified that even if the appellant no.1 undergoes sentence imposed in default of fine, the amount of fine shall be recovered by the Collector, District Kheda as arrears of land revenue and out of the amount recovered, a sum of Rs.7500/(Rupees seven thousand five hundred only) shall be paid to the widow of the deceased as indicated hereinabove.

15. The judgement dated August 16, 1997, rendered by the learned Additional Sessions Judge, Kheda at Nadiad, in Sessions Case No.293/1995 convicting the appellant no.2 of the offence punishable under section 323 of IPC and sentencing him to S.I. for six months and fine of Rs.2000/-, in default SI for three months, and also convicting the appellant no.3 of the offence punishable under section 324 of IPC and sentencing him to R.I. for one year and fine of Rs.2000/-, in default, S.I. for three months, is hereby set aside. The record shows that the appellant nos.2 and 3 are released on bail during the pendency of the appeal and therefore the bail bonds executed by them shall stand cancelled. Direct service permitted.

[J.M PANCHAL, J.]

[M.C. PATEL, J.]

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